

BASE ORDER 12713.7A

From: Commanding General
To: Distribution List

Subj: EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLAINT
SYSTEM

Ref: (a) CPI 713 (NOTAL)

(b) TITLE VII of Civil Rights Act of 1964 as amended in
1991 (NOTAL)

(c) Asst SECNAV memo of 25 Oct 73 (NOTAL)

(d) 29 CFR 1614 (NOTAL)

(e) Agreement between MCLB, Albany, GA and AFGE
Local 2317 of 8 Nov 90

(f) MD 110 (NOTAL)

Encl: (1) Abbreviations and Definitions

(2) Alternative Dispute Resolution (ADR)

1. Purpose. To provide a summary of the EEO complaint system. Management will assist EEO program officials to resolve discrimination matters expeditiously, fairly, and at the lowest organizational level.

2. Cancellation. BO 12713.7.

3. Summary of Revision. This revision contains a substantial number of changes and should be completely reviewed.

4. General. EEO procedures at the Marine Corps Logistics Base, (MCLB) Albany, Georgia, are a part of the Department of the Navy (DON) and the Equal Employment Opportunity Commission (EEOC) complaint system. They apply to appropriated fund and nonappropriated fund employees and to job applicants who submit a complaint based on discrimination because of race, color, sex, age, religion, national origin, physical or mental handicap or retaliation from prior EEO complaint involvement. References (a) through (f) relate. Enclosure (1) is a listing of abbreviations and definitions used throughout this order.

5. Concept. It is the policy of the Federal Government to provide equal opportunity in employment to all persons; to prohibit discrimination in employment because of race, color, sex, religion, national origin, age, physical or mental handicap, or retaliation from prior EEO complaint involvement. Individuals who believe they have been subject to discrimination may use the EEO complaint procedures. The EEO complaint system provides for:

a. Counseling. This is the initial pre-complaint processing stage of the individual EEO complaint procedure. It is a required first step which must be taken by an employee or applicant for employment who believes they have been discriminated against before a formal complaint can be filed. Within 45 days of the alleged discriminatory act or personnel action, the employee or complainant must contact an EEO Counselor who will, following the initial meeting, make appropriate inquiry into the matter, seek a solution on an informal basis, and counsel the complainant on the issues. During this stage, the employee/complainant has the right to anonymity.

b. Formal Complaint Filing. The Counselor shall, insofar as is practicable, conduct a final interview with the complainant no later than 30 calendar days (CD) after the date on which the matter was brought to the attention of the EEO Counselor by the complainant. If the matter has not been resolved within 30 CD's, the counseling can be extended an additional 60 CD's if an Alternative Dispute Resolution (ADR) is in place. See enclosure (2). If an ADR is not in place, a final interview will be conducted at this time and the complainant shall be issued a letter of final interview only, informing the complainant of the right to file a formal complaint within 15 CD's of the receipt of the notice.

c. The Complainant's Right to Representation. At every stage of the complaint process, the complainant shall have the right to representation of their choice. The complainant has the responsibility of immediately informing the Deputy EEO Officer (DEEOO) if legal counsel or other representation has been retained.

d. Disqualification of Representative. The DEEOO may deny a particular representative to a complainant when there is a conflict of interest or position (e.g., including but not limited to EEO Counselor, DEEOO, Human Resources Director, other EEO or civilian personnel management officials, members of the Staff Judge Advocate's Office, Office of Counsel, or complainant's supervisor).

e. Acceptance, Dismissal, Cancellation, Joining or Consolidating Complaint

(1) Acceptance - The EEO Officer (EEEO) or DEEOO of MCLB, Albany, Georgia shall accept the complaint if:

- (a) It is within the EEO purview.
- (b) It is timely.
- (c) It sets forth matters which are not identical to those contained in a previous complaint which is pending before or has been decided by the DON.

After the formal complaint is accepted, a copy of the complaint file is forwarded to the Office of Counsel.

(2) Dismissal - A complaint shall be dismissed for the following reasons:

- (a) It is untimely.
- (b) Fails to state a claim under complaint procedure.
- (c) States same claim as pending or prior complaint.
- (d) It is moot or alleges a proposed action.
- (e) It is pending civil court action.
- (f) If complainant elects to pursue negotiated grievance procedure of Merit Systems Protection Board (MSPB).
- (g) Complainant fails to cooperate (DEEOO must give a written 15 day notice with warning).
- (h) Complainant refuses offer of Full Relief (DEEOO must give a written 30 day notice with EEEO Certification of Offer and Warning).
- (i) Complainant cannot be located (DEEOO must give written 15 day notice with warning).
- (j) Complainant alleges reprisal because MCLB requested reopening of EEOC decision or Petition for Review (PFR) of a mixed case MSPB decision.

(3) Cancellation - A complaint may be canceled at any time because of failure of the complainant to prosecute the complaint. A complaint may not be canceled because a civil action has been filed.

(4) Joining and Consolidating Complaint

(a) Joining Complaints. Complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination, or relating to the same matter, may be joined by the EEOO, DEEOO or the EEOC for processing after notifying the parties that the complaints will be consolidated. The date the first complaint was filed controls the applicable timeframes. Consent by the complainants is not required. Only one investigation will be conducted; however, each complainant may receive a separate report of investigation and may be issued a separate DON final decision addressing the allegations of his or her complaint. When such complaints have been joined, a complainant may withdraw his or her complaint at any time; however, such withdrawal will not affect the processing of the remaining complaints.

(b) Consolidating Complaints. Two or more individual complaints (including a complaint of reprisal) filed by the same complainant may, at the discretion of the EEOO, DEEOO, or the EEOC, be consolidated for processing after notifying the individual that the complaints will be processed as consolidated. The complainant's consent is not required. The date the first complaint was filed controls the applicable timeframes. When consolidating such complaints, there will be only one investigation, one hearing, and one DON final decision on the consolidated complaints.

f. Investigation. Following submission and acceptance of the formal complaint, an investigation is initiated into the discrimination and the merit aspects of the case with findings and recommendations forwarded to the Commanding General. In the Marine Corps, authority to conduct investigations for the formal EEO complaints is delegated to the Office of Complaints Investigation (OCI), Defense Management Services for Civilian Personnel Area Office, Atlanta, Georgia.

g. Receipt of Investigative File. Within 30 CD's of receipt of the investigative file, the complainant may request a final DON decision, with or without a hearing. During this timeframe, the EEOO or DEEOO shall review the file and attempt to resolve the complaint. Although there is no requirement for an informal adjustment meeting, the EEOO, or designee, is strongly encouraged to meet with the complainant to explore possible settlement opportunities. Even if

the complainant requests a final agency decision prior to the 30th day, settlement of the complaint can take place at any time prior to the issuance of the final agency decision by the Secretary of the Navy.

(1) If complaint is adjusted:

(a) The terms of the settlement agreement shall be developed and made a part of the complaint file, with a copy of the settlement agreement provided to the complainant or complainant's representative, Responsible Management Official and Employee Appeals Review Board (EARB).

(b) This settlement agreement represents the termination of the complaint.

(2) If complaint is not adjusted: The DEEOO will forward a copy of the case file, within one business day, directly to the EARB, if the complainant has requested a final agency decision without a hearing. If the complainant has requested a hearing, the DEEOO will forward a copy of the case file to the appropriate EEOC District Office.

h. Class Complaints of Discrimination

(1) Definition of Class. A "Class" is a group of agency (MCLB) employees, and/or applicants for employment with MCLB, on whose behalf it is alleged that they have been, or may be adversely affected by the Command's personnel management policy or practice which MCLB has the authority to rescind or modify and which discriminates against the group on the basis of their common race, color, sex, national origin, age, physical/mental handicap or retaliation from prior EEO complaint involvement.

(2) Agent of a Class. An "Agent of a Class" is a class member who acts for the group during the processing of the class complaint.

(3) Processing Class Complaints. Pre-complaint processing (counseling) will be conducted in the manner described in paragraph 5(a).

i. Cost. All expenses will be paid by the Directorate against which the complaint was lodged.

6. Applicability. This Order is applicable to the Blount Island Command.

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Chief of Staff

DISTRIBUTION: A1
AFGE (5)
HRO/EEO (50)

ABBREVIATIONS AND DEFINITIONS

ADEA Age Discrimination in Employment Act of 1967
ADR Alternative Dispute Resolution
AFGE American Federation of Government Employees
AJ Administrative Judge
BO Base Order
CATS Complaints Action Tracking System
CD Calendar Days
CFR Code of Federal Regulations
CMC Commandant of the Marine Corps
DASN(CPP/EEO) Deputy assistant Secretary of the Navy (Civilian Personnel Policy/Equal Employment Opportunity)
DEEOO Deputy Equal Employment Opportunity Officer
EARB Employee Appeals Review Board
EEO Equal Employment Opportunity
EEOC Equal Employment Opportunity Commission
EEOO Equal Employment Opportunity Officer
EPA Equal Pay Act
FAD Final Agency Decision
FLSA Fair Labor Standards Act of 1938
MSPB Merit Systems Protection Board
NCPDS Naval Civilian Personnel Data System
NOTAL Not to All
OCI Office of Complaints Investigation
OCPM Office of Civilian Personnel Management
OFO Office of Federal Operations
PFR Petition for Review
RMO Responsible Management Official
SECNAV Secretary of the Navy
USC United States Code

1. AJ - An official assigned by the EEOC to hold hearings on formal complaints of discrimination and otherwise process individual and class complaints for the EEOC.

2. Age - An inclusive term which includes individuals of 40 chronological years or older.
3. ADR Resource Group - A group of Marine Corps Logistics Base employees who will serve as mediators and negotiators to assist in the resolution of an EEO complaint at the informal stage.
4. CATS - A subsystem of NCPDS designed to electronically capture data on discrimination cases and provide a tracking system for all informal and formal complaints.
5. Class Complaint - A written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:
 - a. The class is so numerous that a consolidated complaint of the members of the class is impractical.
 - b. There are questions of fact common to the class.
 - c. The claims of the agent of the class are typical of the claims of the class.
 - d. The agent of the class, or his or her representative, if any, will fairly and adequately protect the interests of the class.
6. Complaint - A formal, written allegation of employment discrimination, filed with an appropriate official designated to receive complaints.
7. Deputy EEO Officer - The individual designated by the EEOO to administer the activity or command's EEO program. This includes, as delegated by the EEOO, managing and operating the complaint processing system, supervising EEO counselors, accepting or rejecting complaints, attempting informal resolutions.
8. Discrimination - Any act, or failure to act, impermissibly based in whole or in part on a person's race, color, religion, national origin, sex, age, handicapping condition, and/or reprisal that adversely affects privileges, benefits, working conditions, results in disparate treatment, or has a disparate impact on employees or applicants.
9. EARB - Office within the SECNAV that issues final agency decision for SECNAV to complainant with appeal rights to the EEOC's OFO and/or Civil Action.

10. EEOC - The Federal agency responsible for issuing regulations on the discrimination complaint system within the Federal service. The EEOC holds hearings and makes findings and recommendations. The EEOC's OFO makes decisions on appeals of final agency decision on discrimination complaints. Where issues of discrimination are included, EEOC also reviews, upon request, MSPB appeal decisions of the agency, arbitrator, or Federal Labor Relations Authority under a negotiated grievance procedure.

11. EEO Counseling - The mandatory pre-complaint process in which informal resolution is attempted prior to the filing of a formal complaint.

12. EEO Counselor - A trained and certified Department of the Navy (DON) employee who, working under the direction of the EEOO or activity designee, is authorized to conduct informal inquiries into allegations of discrimination and to attempt informal resolutions before a formal complaint may be filed. EEO Counselors may only be assigned to full-time positions.

13. EEOO - The activity head or commander delegated full authority by the SECNAV to administer the DON EEO Program at his or her activity or command in accordance with EEOC regulations and DON policies.

14. FAD - The decision by the Director of EEO, or his designee, exercising authority delegated by the SECNAV, on a complaint of discrimination. The decision contains pertinent analyses, findings, and appropriate appeal rights. A final agency decision may cancel or dismiss a complaint, in whole or in part, or may be based on the merits of the complaint.

15. Formal Individual Discrimination Complaint - A written complaint, ordinarily submitted on the designated DON complaint form and filed with a designated DON official, which alleges that a specific act of discrimination or reprisal that is personal to the individual has taken place. The written complaint must be signed by the complainant and submitted to the EEOO or other designated official within 15 calendar days of receipt of the Notice of Final Interview from an EEO Counselor.

16. Handicapped Person - A person who:

- a. Has a physical or mental impairment which substantially limits one or more of such person's major life activities;
- b. Has a record of such an impairment; or
- c. Is regarded as having such an impairment.

17. Has a Record of Such an ImPairment - The individual has a history of, or has been classified (or misclassified) as having a mental or physical impairment that substantially limits one or more major life activities.

18. Hostile Environment - A hostile work environment claim is actionable under Title VII if the offensive behavior is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.

19. Informal Individual Discrimination Complaint - A matter of alleged discrimination which is brought to the attention of the EEO Counselor by an aggrieved person before a formal discrimination complaint is filed. The allegation must be specific as to dates, actions, and events.

20. Initial Decision - A decision on an appeal, rendered by an AJ of MSPB, pursuant to 29 CFR Part 1614 or 5 CFR Part 1201 in which issues of prohibited discrimination have been raised.

21. Investigative File - The documentation upon which the final agency decision is based. The record shall include a thorough review of the circumstances under which the alleged discrimination occurred; the treatment of members of the complainant's group as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred; statements of the complainant and witnesses; and copies of, or extracts from records, DON policy statements, and/or regulations relevant to the complaint.

22. Is Regarded as Having Such an Impairment

a. Has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation.

b. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment.

c. Or has none of the impairments but is treated by an employer as having such an impairment.

23. Major Life Activities - Functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and

working.

24. Mixed Case Appeals - An appeal filed with the MSPB, within its jurisdiction, which alleges that the agency action which forms the basis for the appeal was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, handicap, age, and/or reprisal, or alleges that such appealable action resulted in sex-based wage discrimination.

25. Mixed Case Complaint - A complaint of employment discrimination filed with the DON, based on race, color, religion, sex, national origin, handicapping condition, age, and/or reprisal, related to, or stemming from an action taken by an activity or command against the complaint, which action may be appealed to the MSPB pursuant to any allegation of employment discrimination, or it may contain additional allegations which the MSPB has jurisdiction to address.

26. Offer of Full Relief - If complainant refuses within 30 CD's of receipt of offer of settlement from the EEOO, the EEOO can issue a certification of full relief provided the offer gives notice that failure to accept the settlement would result in the dismissal of the complaint.

27. OCI - The Civilian Personnel Management Service, OCI will investigate, for DoD Components, discrimination complaints filed per 29 CFR Part 1614.

28. Physical or Mental Impairment

a. Any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

29. Prohibited Discrimination - Discrimination is prohibited by Section 717 of the Civil Rights Act of 1964, as amended (42 USC 2000e16); Section 501 of the Rehabilitation Act of 1973 as amended (29 USC 791); and sections 12 and 15 of the ADEA of 1967, as amended (29 USC 631 and 633a).

30. Third Party Neutral - Person or persons who will review the EEO case file and will interview the complainant and RMO to make an objective

recommendation for resolution that would be suitable to both parties (complainant and RMO).

ENCLOSURE (1)

ALTERNATIVE DISPUTE RESOLUTION (ADR)

1. Introduction

a. In November 1990, the U.S. Congress passed the Administrative Dispute Resolution Act (ADRA) encouraging the use of ADR in Federal agencies. In the ADRA, alternative means of dispute resolution is defined as: " ... any procedure that is used, in lieu of an adjudication to resolve issues in controversy, including settlement negotiation, conciliation, facilitation, mediation, fact-finding, and arbitration, or any combination thereof." Although EEOC already uses many of these methods in investigating and litigating private sector discrimination complaints, the Federal sector of EEO process has operated under much more formal mechanisms.

b. Specifically, the ADR procedure is intended to: reduce the time taken to process internal complaints of employment discrimination, focus on problem-solving by the disputing parties, prevent the escalation of disputes into multiple complaints of discrimination, reduce future complaints, allow better utilization of limited staff resources, and increase the confidence of all involved parties in the agency's internal EEO process.

2. Requirements

a. All parties involved in the ADR Resource Group will have clearly described roles and responsibilities.

b. They will remain objective.

c. They will adhere to the confidentiality of the information given to them and what occurs in the meetings held.

3. ADR Resource Group

a. Membership consists of MCLB employees. The duties include the following pertaining to EEO complaints:

(1) As mediator and negotiator, acts as a neutral third party to assist in the resolution of EEO complaints.

(2) Encourages and promotes communication between the parties.

(3) Prepares proposed resolutions to the DEEOO.

(4) Maintains the confidentiality of case files reviewed.

b. DEEOO will be responsible for providing clerical sort and office facilities for the Member to perform his/her duties; such as, typing, program assistance, and office space for ADR meeting.

4. Training

a. Individuals who serve as third-party neutrals in any ADR process must be appropriately trained.

b. Third-party neutrals must have received dispute resolution skill training, e.g., conciliation, mediation. They also must have familiarity with EEO law, regulation, and policy.

c. The EEO Branch must publicize the availability of the ADR program, and assure that aggrieved individuals are made aware of its objectives.

5. Evaluation

a. The ADR Resource Group and the ADR procedures will be periodically evaluated (at least annually) for effectiveness of the program in achieving its basic objective of resolving disputes (EEO complaints) more quickly, with less expenditure of resources than disputes processed without the use of ADR.

b. This evaluation will be provided to the Commanding General by the DEEOO.

ENCLOSURE (2)
